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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11	GUEORGUI PANTCHEV,)	Case No. 2:17-cv-02807-CJC-JC
12)	
13	Petitioner,)	ORDER ACCEPTING FINDINGS,
14	v.)	CONCLUSIONS, AND
15)	RECOMMENDATIONS OF
16	MICHAEL MARTEL,)	UNITED STATES MAGISTRATE
17)	JUDGE
	Respondent.)	

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19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the operative First
20 Amended Petition for Writ of Habeas Corpus by a Person in State Custody
21 (“Petition”) and all of the records herein, including the June 22, 2020 Report and
22 Recommendation of United States Magistrate Judge (“Report and
23 Recommendation” or “R&R”), and petitioner’s June 30, 2020 Objections to the
24 Report and Recommendation (“Objections”).

25 The Court has made a *de novo* determination of those portions of the Report
26 and Recommendation to which objection is made. The Court concurs with and
27 accepts the findings, conclusions, and recommendations of the United States
28 Magistrate Judge, and overrules the Objections. Although the Court has

1 considered and overruled all of petitioner's Objections, the Court further addresses
2 certain of petitioner's Objections below.

3 In his Objections, petitioner again contends that the trial court deprived him
4 of the ability to contest the charges against him by excluding Dr. Shaner's opinion
5 testimony that petitioner did not author the "hush" e-mails. (Objections at 3-4).
6 As explained at length in the Report and Recommendation (R&R at 24-27), the
7 exclusion of Dr. Shaner's testimony did not deprive petitioner of the ability to
8 claim that petitioner did not write the "hush" e-mails – petitioner presented this
9 defense through his own testimony and through his counsel's argument about the
10 discernible differences between the "hush" e-mails and petitioner's known
11 communications.

12 Relatedly, petitioner also appears to contend that the trial court's refusal to
13 instruct with a third party culpability instruction did not allow the jury to consider
14 petitioner's defense that someone other than petitioner sent the "hush" e-mails.
15 (Objections at 4). The record belies this assertion. The evidence adduced at trial
16 regarding Mason's e-mail and Mason's possible motive for framing petitioner,
17 together with defense counsel's argument that someone other than petitioner sent
18 the "hush" e-mails and the jury instructions given permitted the jury to consider
19 whether the prosecution had proven beyond a reasonable doubt that it was
20 petitioner (and not someone else) who had engaged in witness intimidation. See
21 R&R at 33-34 (discussing same).

22 Finally, although petitioner takes issue with the Magistrate Judge's
23 reasoning for rejecting his claim that he was denied the right to be present during
24 closing arguments (Objections at 4-5), the Court agrees with the Magistrate
25 Judge's findings, since the record amply establishes that: (1) consistent with
26 Illinois v. Allen, 397 U.S. 337, 342-43 (1970), petitioner forfeited his right to be
27 present during closing argument by his repeated outbursts at trial; and (2) even if
28 petitioner was erroneously excluded from closing arguments, petitioner has not

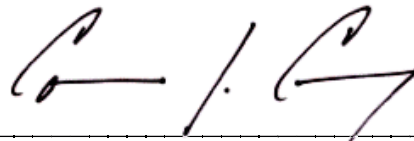
1 shown that his absence had a substantial and injurious effect or influence on the
2 jury's verdict since the jury had ample opportunity to view and relate to petitioner
3 throughout trial. See R&R at 45-48 (discussing same).

4 IT IS THEREFORE ORDERED that the Petition is denied, that this action
5 is dismissed with prejudice and that Judgment be entered accordingly.

6 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and
7 the Judgment herein on counsel for petitioner and respondent.

8 IT IS SO ORDERED.

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10 DATED: July 15, 2020

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13 HONORABLE CORMAC J. CARNEY
14 UNITED STATES DISTRICT JUDGE
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